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S.P. 474

In Senate, April 14, 2021

An Act To Establish a Stewardship Program for Packaging

Received by the Secretary of the Senate on April 12, 2021. Referred to the Committee on Environment and Natural Resources pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator DILL of Penobscot.

Cosponsored by Senator: POULIOT of Kennebec, Representatives: DUNPHY of Old Town, SKOLFIELD of Weld, WHITE of Waterville.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 38 MRSA §1776, sub-§11**, as enacted by PL 2013, c. 315, §7, is amended
3 to read:

4 **11. Exceptions.** This section does not apply to products subject to section 1610,
5 1665-A, 1665-B, 1672, 2146, 2165 or 2166.

6 **Sec. 2. 38 MRSA §2146** is enacted to read:

7 **§2146. Stewardship program for packaging**

8 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
9 following terms have the following meanings.

10 A. "Compostable" means, with respect to a covered product, that the covered product
11 or its associated packaging material has been certified by a 3rd-party certifying body
12 as meeting ASTM D6400, the standard specification published by ASTM International
13 for the labeling of plastics designed to be aerobically composted in municipal or
14 industrial facilities, or ASTM D6868, the standard specification published by ASTM
15 International for labeling of end items that incorporate plastics and polymers as
16 coatings or additives with paper and other substrates designed to be aerobically
17 composted in municipal or industrial facilities, or successor publications.

18 B. "Composting rate" means, with respect to a covered product, the percentage of the
19 total amount by weight of that covered product that is discarded in the State and
20 managed through composting or anaerobic digestion in the State or in another
21 jurisdiction.

22 C. "Covered product" means a product that is sold, offered for sale or distributed for
23 sale in or into the State contained, protected, delivered, presented or distributed in or
24 using packaging material. "Covered product" includes the packaging material used for
25 or associated with the containment, protection, delivery, presentation or distribution of
26 the product to the ultimate consumer in the State.

27 D. "Drug" means any substance recognized as a drug under 21 United States Code,
28 Section 321(g)(1), as amended, and any regulations adopted pursuant to that provision,
29 that is sold, offered for sale or dispensed in the State, whether directly or through a
30 wholesaler, in any form, including, but not limited to, prescription and nonprescription
31 drugs, drugs in medical devices and combination products, brand and generic drugs
32 and drugs for veterinary use. "Drug" does not include:

33 (1) Vitamins or supplements;

34 (2) Herbal-based remedies and homeopathic drugs, products or remedies;

35 (3) Cosmetics, soap with or without germicidal agents, laundry detergent, bleach,
36 household cleaning products, shampoo, sunscreen, toothpaste, lip balm,
37 antiperspirant or other personal care products that are regulated as both cosmetics
38 and nonprescription drugs under the Federal Food, Drug, and Cosmetic Act;

39 (4) Pet pesticide products contained in pet collars, powders, shampoos, topical
40 applications or other forms;

- 1 (5) Drugs that are biological products, as defined in 21 Code of Federal
2 Regulations, Section 600.3(h), if the manufacturer provides a program to take back
3 that drug;
- 4 (6) Drugs for which a manufacturer provides a program to take back those drugs
5 as part of a United States Food and Drug Administration managed risk evaluation
6 and mitigation strategy;
- 7 (7) Emptied syringes or emptied medical devices or the component parts or
8 accessories of those products or devices;
- 9 (8) Drugs that are used solely in a clinical setting; and
- 10 (9) Dialysate drugs required to perform home kidney dialysis.
- 11 E. "Packaging material" means the material used for or associated with the
12 containment, protection, delivery, presentation or distribution of a covered product at
13 the time the covered product is received by the consumer of the covered product at a
14 retail location in the State or at the consumer's residence in the State. "Packaging
15 material" does not include material:
- 16 (1) That is a beverage container, as defined in section 3102, subsection 2 and
17 subject to the requirements of chapter 33, or other material used for or associated
18 with the containment, protection, delivery, presentation or distribution of the
19 beverage container;
- 20 (2) That is a reusable food service container;
- 21 (3) That is used exclusively for transporting a covered product between entities
22 within the supply chain of the product that do not provide the product to its ultimate
23 consumer and that is not used for the containment, protection, delivery,
24 presentation or distribution of the covered product at the time the product is
25 received by the consumer of the covered product;
- 26 (4) That is used for the containment, protection, delivery, presentation or
27 distribution of a drug, as that term is defined in paragraph D, that is collected under
28 a stewardship program in the State that has been approved for operation by the
29 department and has been established to collect and dispose of such drugs;
- 30 (5) That is used for the containment, protection, delivery, presentation or
31 distribution of a drug, as that term is defined under Section 321 of the Federal
32 Food, Drug, and Cosmetic Act, as regulated by the United States Food and Drug
33 Administration under the Federal Food, Drug, and Cosmetic Act;
- 34 (6) That is a medical device or a biological product, or is used for the containment,
35 protection, delivery, presentation or distribution of a medical device or a biological
36 product, as regulated by the United States Food and Drug Administration under 21
37 Code of Federal Regulations, Parts 200, 300 and 800;
- 38 (7) That is used for the containment, protection, delivery, presentation or
39 distribution of an over-the-counter human drug product for which tamper-evident
40 packaging is required, as regulated by the United States Food and Drug
41 Administration under 21 Code of Federal Regulations, Section 211.132;

- 1 (8) That is used for the containment, protection, delivery, presentation or
2 distribution of a substance regulated by the United States Consumer Product Safety
3 Commission pursuant to the federal Poison Prevention Packaging Act of 1970 for
4 which special packaging is required under 16 Code of Federal Regulations, Part
5 1700;
- 6 (9) That is used for the containment, protection, delivery, presentation or
7 distribution of a substance that is a hazardous waste as defined in 40 Code of
8 Federal Regulations, Part 261, Subparts C and D;
- 9 (10) That is intended to be used on an ongoing basis for the long-term
10 transportation, storage or protection of a durable product;
- 11 (11) That is used for the containment, protection, delivery, presentation or
12 distribution of a product regulated under the Federal Insecticide, Fungicide and
13 Rodenticide Act;
- 14 (12) That is used in the shipment of hazardous materials and that:
- 15 (a) Pursuant to the federal packaging material specifications under 49 Code of
16 Federal Regulations, Section 178.509 or 178.522 may not be manufactured
17 using used material;
- 18 (b) Is subject to the testing standards set forth in 49 Code of Federal
19 Regulations, Part 178, Subpart M; or
- 20 (c) Is subject to United Nations publication titled Recommendations on the
21 Transport of Dangerous Goods, or successor publication;
- 22 (13) That is used for the containment, protection, delivery, presentation or
23 distribution of a product for which the signal word "danger" or "poison" is required
24 to be included on the product's label pursuant to the Federal Hazardous Substances
25 Act, 15 United States Code, Chapter 30; or
- 26 (14) That, by design, and as a result of the anticipated use by a consumer of the
27 material or the product the material contains or protects, becomes unsafe or
28 unsanitary to recycle.
- 29 F. "Packaging stewardship fund" or "fund" means the fund established and managed
30 by a stewardship organization pursuant to subsection 5.
- 31 G. "Packaging stewardship organization" or "stewardship organization" means a 3rd-
32 party entity established by one or more responsible parties pursuant to subsection 2 to
33 operate a packaging stewardship program.
- 34 H. "Packaging stewardship program" or "program" means a program implemented
35 under this section by a stewardship organization to assess and collect payments from
36 participating responsible parties in accordance with subsection 4 and to use such
37 collected payments for the purposes described in subsection 6.
- 38 I. "Performance goal" means a goal identified pursuant to subsection 3, paragraph A,
39 subparagraph (8) to measure a packaging stewardship program's progress in achieving
40 waste reduction, reuse and recycling improvements for each type of covered product
41 managed under the program.

1 J. "Recyclable" means, with respect to a covered product, that the covered product or
2 its associated packaging material meets the criteria and standards for recyclability as
3 determined pursuant to subsection 3, paragraph A, subparagraph (4).

4 K. "Recycling" has the same meaning as in section 1771, subsection 7.

5 L. "Recycling access rate" means the percentage of households in the State that have
6 access to combined waste disposal and recycling services.

7 M. "Recycling and recovery best practice standards" means the requirements and
8 standards identified in the plan proposed pursuant to subsection 3, paragraph A,
9 subparagraph (6).

10 N. "Recycling rate" means, with respect to a covered product, the percentage of the
11 total amount by weight of that covered product that is discarded in the State and
12 considered usable or marketable.

13 O. "Responsible party" means, with respect to a covered product using packaging
14 material:

15 (1) The person that manufactures the covered product using packaging material
16 under the person's own brand and sells, offers for sale or distributes for sale direct
17 to consumers the covered product and packaging material in or into the State;

18 (2) If there is no person to which subparagraph (1) applies, the person that is the
19 licensee of the trademark, whether registered in the State or unregistered, under
20 which the covered product using packaging material is used in a commercial
21 enterprise or is sold, offered for sale or distributed to consumers for sale in or into
22 the State; or

23 (3) If there is no person to which subparagraphs (1) or (2) apply, the person that
24 imports the covered product using packaging material into the State for sale,
25 offering for sale or distribution to consumers for sale in or into the State.

26 P. "Reusable" means, with respect to a covered product, that the covered product or
27 its associated packaging material is capable of and designed to be reused or refilled
28 and:

29 (1) A program is available to residents of the State that allows for the collection
30 and reuse or refilling of the covered product or packaging material; or

31 (2) Facilities or other products are available to residents of the State that allow a
32 resident to reuse or refill the covered product or packaging material so that it may
33 be reused in a manner similar to the intended use of the original covered product
34 or for a purpose similar to its original purpose.

35 **2. Formation of stewardship organization.** On or before October 1, 2023, each
36 responsible party, individually or collectively with other responsible parties, shall submit
37 to the department a proposal to establish a stewardship organization in accordance with the
38 requirements of this subsection.

39 A. A stewardship organization proposal under this subsection must:

40 (1) List the responsible parties that have collectively decided to establish the
41 stewardship organization to manage a packaging stewardship program on their
42 behalf;

1 (2) Describe how the stewardship organization will be designed to successfully
2 operate a packaging stewardship program in the State to collect payments from
3 responsible parties, distribute funding to eligible entities and otherwise administer
4 the program in accordance with this section;

5 (3) Describe how the stewardship organization will establish a state stewardship
6 plan committee to conduct a statewide recycling needs assessment and to develop
7 a stewardship program plan for submission to the department pursuant to
8 subsection 3.

9 (a) The committee described in this subparagraph must include, at a minimum,
10 representation from responsible parties, manufacturers of packaging material,
11 retailers, municipalities, waste and recycling collectors and transporters,
12 recycling and composting facilities and other entities, which may include
13 consultants.

14 (b) The statewide recycling needs assessment described in this subparagraph
15 must, at a minimum, include an evaluation of:

16 (i) Current funding needs affecting recycling access and availability in the
17 State;

18 (ii) The capacity, costs and needs associated with the collection and
19 transportation of recyclable material in the State;

20 (iii) The processing capacity, market conditions and opportunities in the
21 State and regionally for recyclable and compostable material; and

22 (iv) Consumer education needs in the State with respect to recycling and
23 composting and with respect to reducing contamination in collected
24 recyclable and compostable material; and

25 (4) Describe how the stewardship organization will establish a state recycling
26 program committee to provide input regarding the plan to be submitted for
27 department approval under subsection 3 and regarding the operation of the program
28 implemented by the stewardship organization under this section.

29 (a) The stewardship organization shall invite the commissioner or the
30 commissioner's designee to be a member of the committee described in this
31 subparagraph.

32 (b) The committee described in this subparagraph shall include, at a minimum,
33 an individual with expertise in the development of recycling markets, the
34 operator of a recycling facility, a representative of a regional waste
35 management and recycling organization, a representative of the composting
36 industry, a representative of a nonprofit environmental advocacy organization,
37 an individual with expertise in consumer education and an individual with
38 expertise in advanced recycling technology.

39 B. After reviewing a proposal submitted under this subsection to determine whether
40 the proposal meets the requirements of this subsection, the department shall within 60
41 days of receipt of the proposal approve the proposal, approve the proposal subject to
42 certain modifications or reject the proposal. If the department rejects a proposal
43 submitted under this subsection, it shall provide in writing to the person that submitted

1 the proposal a description of the basis for its decision and the person may within 30
2 days of receipt revise and resubmit the proposal to the department for review; the
3 department shall review and approve or reject the revised proposal within 30 days of
4 receipt. The department may approve the establishment of more than one stewardship
5 organization based upon the proposals submitted under this subsection.

6 C. A responsible party may satisfy the requirements of this section by joining a
7 stewardship organization already approved by the department under this section.

8 **3. Submission of plan; implementation; annual update.** On or before October 1,
9 2024, a stewardship organization approved by the department pursuant to subsection 2 shall
10 submit to the department a plan for the establishment of a packaging stewardship program
11 that meets the requirements of this subsection.

12 A. A stewardship program plan under this subsection must:

13 (1) Include contact information for the stewardship organization;

14 (2) Include a list of the responsible parties participating in the stewardship
15 organization;

16 (3) List the brands of covered products and types of packaging material sold,
17 offered for sale or distributed for sale to consumers in or into the State by each
18 responsible party participating in the stewardship organization;

19 (4) Propose criteria and standards to be used to determine the recyclability of
20 packaging material under the program. Such standards and criteria must be
21 consistent with applicable national and international recyclability standards
22 including, but not limited to, relevant standards adopted by ASTM International or
23 the International Organization for Standardization, or successor organizations;

24 (5) Include the results of the statewide recycling needs assessment conducted by
25 the state stewardship plan committee established by the stewardship organization
26 pursuant to subsection 2, paragraph A, subparagraph (3);

27 (6) Propose recycling and recovery best practice standards that are designed to
28 support the performance goals described in subparagraph (8). The stewardship
29 organization shall demonstrate how the development of the standards involved
30 input from the state stewardship plan committee and the state recycling program
31 committee established pursuant to subsection 2, paragraph A, subparagraphs (3)
32 and (4), respectively. The plan must include a description of how the stewardship
33 organization will determine compliance with those standards by eligible entities as
34 a condition of receiving funding under subsection 6. The standards under this
35 subparagraph must include:

36 (a) Minimum standards designed to ensure access to recycling and composting
37 collection or drop-off for residents of the State;

38 (b) Minimum technology standards for use by materials recovery facilities and
39 recycling facilities in the State;

40 (c) Minimum standards for the types of packaging material that will be
41 accepted for recycling under the program; and

1 (d) Wage and safety improvement plans for individuals working at or under
2 municipal recycling and composting sites or programs;

3 (7) Include a description of how the stewardship organization intends to provide
4 technical assistance to municipalities with fewer than 2,500 residents in complying
5 with the standards under subparagraph (6) in order to receive funding in accordance
6 with subsection 6. A stewardship organization may suspend the assistance
7 described in this subparagraph when the distributions required under subsection 6
8 exceed the stewardship organization's anticipated annual budget or at such time as
9 the stewardship organization determines that more than 50% of the municipalities
10 described in this subparagraph are able to comply with the standards adopted by
11 the stewardship organization pursuant to subparagraph (6);

12 (8) Propose statewide performance goals for each type of packaging material to be
13 managed under the program, which must be designed to be achieved within 5 years
14 from the date the plan is approved, be technologically and commercially feasible,
15 support the State's solid waste management hierarchy under section 2101 and
16 include goals for:

17 (a) Achievement of a statewide recycling rate, recycling access rate,
18 composting rate, contamination rate, waste reduction rate and alternative
19 material recovery rate;

20 (b) Recycling quality standards as measured using total commodity revenue,
21 recycled material content use standards, recyclable packaging design
22 standards, greenhouse gas emissions reductions standards and a highest and
23 best use standard for recyclable material; and

24 (c) Any other standards, rates or other measures for achieving environmental
25 improvement;

26 (9) Include a description of the method by which the stewardship organization will
27 measure its progress toward achievement of the goals described in subparagraph
28 (8), to be implemented no later than one year from the date that the plan is
29 approved;

30 (10) Include a description of the method by which the stewardship organization
31 will determine the fees to be paid by each responsible party consistent with the
32 requirements of subsection 4;

33 (11) Include a description of the procedures and methodology to be established by
34 the stewardship organization, in consultation with the state stewardship plan
35 committee established pursuant to subsection 2, paragraph A, subparagraph (3), for
36 the distribution of funding pursuant to subsection 6; and

37 (12) Include any other information required by the department that is necessary for
38 the department to evaluate the performance goals identified by the stewardship
39 organization under this subsection.

40 B. After reviewing a plan submitted under this subsection to determine whether the
41 plan meets the requirements of this subsection, the department shall approve the plan,
42 approve the plan subject to certain modifications or reject the plan. If the department
43 rejects a plan submitted under this subsection, it shall provide in writing to the

1 stewardship organization a description of the basis for its decision and the stewardship
2 organization may revise and resubmit the plan to the department for review.

3 C. If the department approves a plan submitted under this subsection, the stewardship
4 organization that submitted the plan shall implement the program proposed in the plan
5 no later than January 1, 2025, unless a later implementation date is approved by the
6 department.

7 D. On or before October 1, 2025, and annually thereafter, a stewardship organization
8 that implemented a plan approved under this subsection shall update the plan as
9 necessary to reflect any program changes or other information required by this section
10 or by the department and resubmit the plan to the department for approval in
11 accordance with the requirements of this subsection. At the time that a stewardship
12 organization submits an updated plan to the department pursuant to this paragraph, the
13 stewardship organization shall also report to the department a summary of program
14 activities, including relevant data, for the prior calendar year.

15 **4. Responsible party fees; fee adjustments.** Responsible parties participating in a
16 stewardship program shall annually pay to the stewardship organization operating the
17 program the fees required under this subsection.

18 A. The stewardship organization shall annually determine the anticipated annual
19 budget for the stewardship organization necessary to manage the program and to
20 achieve progress toward the performance goals adopted pursuant to subsection 3,
21 paragraph A, subparagraph (8). In determining the budget under this paragraph, the
22 stewardship organization shall consider the results of the statewide recycling needs
23 assessment conducted by the state stewardship plan committee pursuant to subsection
24 2, paragraph A, subparagraph (3).

25 B. The stewardship organization shall adopt a fee schedule for determining the amount
26 of the fee to be paid annually by each responsible party that is designed to cover all
27 costs associated with:

28 (1) Implementation of a plan approved under subsection 3, including any
29 associated administrative costs incurred in that implementation by a responsible
30 party or the stewardship organization;

31 (2) The distributions required under subsection 6; and

32 (3) The fees the stewardship organization is required to pay to the department
33 pursuant to subsection 7, paragraph A.

34 C. The fee schedule adopted by the stewardship organization pursuant to paragraph B
35 must allow a responsible party to pay an annual fee determined using the responsible
36 party's annual national sales figures that are attributable to the State as calculated on a
37 per capita basis.

38 D. Following the initial implementation of a plan approved under subsection 3, when
39 directed by the stewardship organization, each responsible party shall annually pay to
40 the stewardship organization the required fee based on the fee schedule adopted under
41 paragraph B, which the stewardship organization shall deposit into the fund established
42 under subsection 5.

1 E. The stewardship organization may accept but may not require payments from
2 responsible parties in the calendar year prior to the calendar year in which a plan
3 approved by the department is initially implemented to cover the stewardship
4 organization's costs of developing the plan and implementing the program. In the event
5 that a responsible party makes such a prospective payment to the stewardship
6 organization prior to initial program implementation, the stewardship organization
7 shall reduce the fee owed by that responsible party during the first calendar year of
8 program operation pursuant to this subsection by an amount equal to the amount of the
9 prospective payment.

10 F. If a responsible party can demonstrate to the satisfaction of the stewardship
11 organization that the packaging material associated with a covered product sold,
12 offered for sale or distributed for sale in or into the State by the responsible party
13 achieved an 80% or greater recycling rate in the State during the prior calendar year,
14 the stewardship organization may reduce the fees owed by the responsible party under
15 this subsection to an amount that represents no more than the costs associated with the
16 transportation for recycling in the State of that packaging material.

17 G. Beginning during the 5th year of program implementation, unless an earlier date is
18 agreed upon by the stewardship organization and the state stewardship plan committee
19 established pursuant to subsection 2, paragraph A, subparagraph (3), the stewardship
20 organization may propose for adoption as part of an updated plan submitted under
21 subsection 3, paragraph D a schedule of fee adjustments for packaging material. In
22 developing such a schedule of fee adjustments, the stewardship organization shall
23 consider as a basis for proposing favorable fee adjustments the following factors:

24 (1) Achievement of recyclability of packaging material that was previously not
25 considered recyclable;

26 (2) Increased use of post-consumer recycled content in packaging material;

27 (3) Achievement by packaging material of the requirements of ISO 18602:2013,
28 the methodologies and procedures for optimization of the packaging system
29 published by the International Organization for Standardization, or successor
30 publication;

31 (4) Demonstration of greenhouse gas emissions reductions relating to the use of a
32 packaging material type associated with a covered product as compared to a
33 previously used packaging material type or as compared to a packaging material
34 type commonly used for similar products; or

35 (5) Achievement of significant reduction in food waste generation or product
36 breakage relating to the use of a packaging material type associated with a covered
37 product as compared to a previously used packaging material type or as compared
38 to a packaging material type commonly used for similar products.

39 H. Nothing in this section prohibits a stewardship organization from establishing and
40 requiring by private agreement or contract the payment of other fees associated with a
41 covered product's supply chain by 3rd parties that are not responsible parties.

42 **5. Packaging stewardship fund.** In accordance with the provisions of this subsection,
43 a stewardship organization shall establish and manage a packaging stewardship fund. The
44 stewardship organization shall deposit into the fund all payments received from responsible

1 parties pursuant to subsection 4 and shall distribute from the fund payments authorized
2 pursuant to subsection 6.

3 A. In addition to the distributions authorized pursuant to subsection 6, the stewardship
4 organization may expend from the fund those payments necessary to cover the
5 stewardship organization's reasonable operating expenses and administrative costs.

6 B. In establishing the fund under this subsection, the stewardship organization shall
7 ensure that, in the event that the stewardship organization ceases to exist or the
8 department withdraws its approval for the program that the stewardship organization
9 had previously implemented, the funds within the fund remain within the fund until
10 they can be transferred to a successor stewardship organization or the department
11 approves the stewardship organization's continued operation of the program.

12 **6. Payments to support operational recycling costs; recycling improvement**
13 **grants.** In accordance with the provisions of this subsection, a stewardship organization
14 shall distribute from the fund payments to support the operational recycling costs of eligible
15 entities and grants to improve recycling infrastructure in the State.

16 A. Based on the statewide recycling needs assessment under subsection 3, paragraph
17 A, subparagraph (5) and considering the performance goals established pursuant to
18 subsection 3, paragraph A, subparagraph (8), the stewardship organization shall
19 annually determine the amount of funds anticipated to be available within the fund
20 under subsection 5 for distribution pursuant to this paragraph to offset certain
21 operational recycling costs incurred by eligible entities.

22 (1) For the purposes of this paragraph, an eligible entity is a municipality, a refuse
23 disposal district under chapter 17 or a regional association in the State that:

24 (a) Demonstrates to the satisfaction of the stewardship organization that the
25 entity has complied with or achieved measurable progress toward complying
26 with the recycling and recovery best practice standards adopted pursuant to
27 subsection 3, paragraph A, subparagraph (6);

28 (b) Reports to the stewardship organization in a manner prescribed by the
29 organization the amount of packaging material it collected, processed and
30 recycled or composted during the prior calendar year; and

31 (c) As directed by the stewardship organization, provides any other
32 information necessary for the stewardship organization to calculate for that
33 entity the distributions described in subparagraph (2).

34 If a municipality, refuse disposal district or regional association contracts with a
35 private entity for the collection, transportation, processing and recycling of
36 packaging material, the stewardship organization shall consider the private entity
37 to be an eligible entity under this subparagraph and, as appropriate, shall distribute
38 the amounts calculated pursuant to subparagraph (2) to that private entity as long
39 as the private entity meets the requirements of divisions (a) to (c).

40 (2) The stewardship organization shall annually distribute to each eligible entity
41 the following amounts:

42 (a) A fixed amount for each ton or a per capita amount for packaging material
43 recycled by the entity in the prior calendar year based upon the average costs

1 associated with the transportation, from a central location within a
2 municipality, of collected packaging material from the municipality to a
3 recycling facility; the processing of and removal of contamination from
4 packaging material by a recycling facility; and the recycling or composting of
5 packaging material in the State or in another jurisdiction less the average fair
6 market value in the State for that packaging material. In determining costs
7 under this division, the stewardship organization may not include costs
8 associated with the landfill disposal of packaging material, except for costs
9 associated with the landfill disposal of contaminated materials removed from
10 collected packaging material; and

11 (b) An additional fixed amount for each ton or a per capita amount for
12 packaging material that is not considered recyclable pursuant to this section
13 that are recycled, composted or otherwise diverted from landfill disposal by
14 the entity in the prior calendar year less the average fair market value in the
15 State for that packaging material.

16 B. Based on the statewide recycling needs assessment described pursuant to subsection
17 3, paragraph A, subparagraph (5) and considering the performance goals established
18 pursuant to subsection 3, paragraph A, subparagraph (8), the stewardship organization
19 shall annually determine the amount of funds anticipated to be available within the
20 fund under subsection 5 for distribution pursuant to this paragraph in the form of grants
21 to eligible entities to support improvements in recycling infrastructure.

22 (1) For the purposes of this paragraph, an eligible entity is a municipality, a refuse
23 disposal district under chapter 17, a regional association or a private entity in the
24 State that:

25 (a) Submits a grant proposal to the stewardship organization designed to
26 improve recycling infrastructure in the State;

27 (b) Describes in the grant proposal under division (a) how the grant will
28 promote compliance with the recycling and recovery best practice standards
29 adopted pursuant to subsection 3, paragraph A, subparagraph (6); and

30 (c) As directed by the stewardship organization, provides as part of the grant
31 proposal under division (a) all other information necessary for the stewardship
32 organization to evaluate the proposal.

33 (2) Subject to the availability of funds as determined under this paragraph, after
34 annually soliciting grant proposals under this paragraph from eligible entities and
35 reviewing all such grant proposals received, the stewardship organization shall
36 distribute grants to fund those proposals, or a portion of those proposals, based on
37 the following order of priority:

38 (a) Proposals designed to support or improve end market development
39 programs or infrastructure in the State;

40 (b) Proposals designed to support or improve recyclable material sorting or
41 processing technology or infrastructure in the State;

42 (c) Proposals designed to support or improve advanced recycling technology
43 or infrastructure in the State;

1 (d) Proposals designed to support or expand composting infrastructure in the
2 State; and

3 (e) Proposals designed to increase consumer education in the State regarding
4 accessing recycling infrastructure and reducing contamination in recycling.

5 C. In consultation with the state stewardship plan committee established pursuant to
6 subsection 2, paragraph A, subparagraph (3), the stewardship organization shall adopt
7 methods for the reporting or submission of the information required to obtain eligibility
8 for the distributions under paragraph A or the grants under paragraph B that are not
9 unduly burdensome on the entities that may be reporting or submitting that
10 information. As determined pursuant to subsection 3, paragraph A, subparagraph (7),
11 if the stewardship organization has elected to provide technical assistance in complying
12 with the requirements of this subsection to municipalities with fewer than 2,500
13 residents, the stewardship organization shall establish procedures or programs to
14 facilitate the provision of that technical assistance.

15 **7. Administration and enforcement; rulemaking; fees; report.** The department
16 shall administer and enforce this section and may adopt rules as necessary to implement
17 this section. Rules adopted pursuant to this subsection are routine technical rules as defined
18 in Title 5, chapter 375, subchapter 2-A.

19 A. At the time that a stewardship organization submits a plan to the department
20 pursuant to subsection 3 to initially establish a stewardship program, and annually
21 thereafter, the department shall require the stewardship organization to pay to the
22 department a reasonable annual fee established by the department, not to exceed
23 \$300,000, to cover the department's actual costs for review of the plan and the costs in
24 the prior fiscal year for the department's oversight, administration and enforcement of
25 the program implemented by the stewardship organization pursuant to this section. At
26 the time that one or more responsible parties submit a proposal to the department
27 pursuant to subsection 2 to establish a stewardship organization, the department shall
28 require the payment of a reasonable one-time fee to cover the department's actual costs
29 for review of the proposal.

30 B. Beginning February 15, 2025, and annually thereafter, the department shall submit
31 a report to the joint standing committee of the Legislature having jurisdiction over
32 environment and natural resources matters regarding the packaging stewardship
33 programs implemented pursuant to this section. The report required under this
34 paragraph may be included in the report required pursuant to section 1772, subsection
35 1.

36 C. The department shall monitor actions at the federal level regarding the establishment
37 of similar stewardship programs for covered products and shall include information
38 regarding those actions in the report required under paragraph B. If the department
39 determines that legislation is enacted or programs are established at the federal level
40 that achieve the goals of this section, the department shall recommend in the report
41 required under paragraph B that this section be repealed or amended as necessary.

42 **8. Antitrust exclusions.** A responsible party or a stewardship organization, including
43 a responsible party's or stewardship organization's officers, members, employees and
44 agents that organize a packaging stewardship program under this section, is immune from
45 liability for the responsible party's or stewardship organization's conduct under state laws

1 relating to antitrust, restraint of trade, unfair trade practices and other regulation of trade or
2 commerce only to the extent necessary to plan and implement the responsible party's or
3 stewardship organization's packaging stewardship program consistent with the provisions
4 of this section.

5 **9. Preemption.** To ensure maximum effectiveness through uniform statewide
6 application, beginning January 1, 2025, the State intends to occupy the whole field of
7 regulation of stewardship programs for covered products and packaging material consistent
8 with the provisions of this section. A local government may not adopt an ordinance
9 establishing, requiring the establishment of or otherwise regulating stewardship programs
10 for covered products and packaging material and, beginning January 15, 2025, any
11 ordinance or regulation that violates this subsection is void and has no force or effect.

12 **SUMMARY**

13 This bill facilitates the establishment of one or more stewardship programs in the State
14 for packaging material to be operated by a stewardship organization approved by the
15 Department of Environmental Protection. Under such a program, the plan for which must
16 be approved by the department and annually updated following a department review,
17 participating responsible parties that sell, offer for sale or distribute for sale in or into the
18 State certain products contained, protected, delivered, presented or distributed in or using
19 packaging material are required to pay fees related to the packaging material associated
20 with those products.

21 Responsible party payments received by a stewardship organization are used to offset
22 operational recycling costs incurred by entities meeting certain eligibility requirements,
23 which may include municipalities, refuse disposal districts and regional waste management
24 associations in the State. Responsible party payments are also used to fund grants to entities
25 meeting certain eligibility requirements, which may include municipalities, refuse disposal
26 districts, regional waste management associations and private entities in the State, to
27 support improvements in recycling infrastructure in the State.